No. 98-983 (4)

In The

Supreme Court of the United States

October Term, 1998

CECLILIA LACKS,

Petitioner,

v.

FERGUSON-FLORISSANT REORGANIZED SCHOOL DISTRICT, R-2,

Respondent.

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

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MEMORANDUM IN OPPOSITION TO
MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

This matter is before the Court on movants'[1] Motion to file an *amicus curiae* brief (hereinafter referred to as the "Brief") in support of the pending Petition for Writ of Certiorari, filed by Petitioner Cecilia Lacks in the above-captioned matter. To the extent the proffered Brief fails to comport with the applicable Supreme Court Rules, Respondent Ferguson-Florissant Reorganized School District, R-2 (the "District") objects to the filing of the Brief.

Supreme Court Rule 37, which governs the filing of an amicus curiae brief, specifically provides that:

> 1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

Clearly, a brief that merely reargues the same issues already addressed by the parties and relies on essentially the same authority cited by the parties already before the Court does not "bring[] to the attention of the Court relevant matter not already brought to its attention . . . ." Therefore, the filing of such a brief is "not favored."

In support of their Motion to file an *amicus curiae* brief, movants allege that their "mission" is the protection of First Amendment rights and that they are concerned about the "chilling and detrimental effect" of the Eighth Circuit's decision below. However, Petitioner Lacks already placed this "concern" squarely before this Court through her Petition for Writ of Certiorari. *See* Petitioner's Petition for Writ of Certiorari at pp. 21-22. Furthermore, the parties

[1] "Movants" refers collectively to Pen American Center; The American Association of University Woman; the American Booksellers Foundation for Free Expression; American Society of Journalists and Authors; The Authors Guild; Feminists for Free Expression; The Institute for First Amendment Studies; Journalism Education Association, The National Campaign for Freedom of Expression; The National Council of Teachers of English; the National Coalition Against Censorship; the National Education Association; the National Writers Union; and Young Playwrights, Inc.

extensively addressed this proffered "concern" before the Eighth Circuit. *See, e.g.*, Appellee Lacks' Brief, filed in the United States Court of Appeals for the Eighth Circuit, at pp. 42-43. Both the Eighth Circuit's panel decision and Judge McMillian's opinion dissenting from the denial of rehearing address this "concern" and are before this Court as appendices to the pending Petition for Writ of Certiorari. *See* Petition for Writ of Certiorari, pp. 11a & 35a.

Similarly, movants argue in support of their Motion to file an *amicus curiae* brief that censorship in the classroom can be permitted only where "necessary to achieve a legitimate educational goal." Neither party denies the truth of that statement. In fact, the District asserted the legitimacy of its interest in restricting speech in the secondary school classroom in support of its opposition to Lacks' Petition for Writ of Certioari. *See* Brief in Opposition to Petition for Writ of Certioari at pp. 13-16. Further, to the extent that there is any protected speech at issue in this case, in the Court of Appeals, the parties extensively briefed the legitimacy of the District's interest in restricting concededly profane speech in the secondary school context. *See generally* Appellant's Brief, filed in the United States Court of Appeals for the Eighth Circuit, at Section V(B)(3); Appellee's Brief, filed in the United States Court of Appeals for the Eighth Circuit, at Section III(B)(2). The Eighth Circuit ultimately determined that the District's interest in restricting concededly profane speech permitted the District to terminate Petitioner's employment. The Eighth Circuit's findings on this issue are reproduced in the Appendix to the pending Petition for Writ of Certiorari at page 11a. Consequently, this issue is also already before the Court.

Finally, in their Motion, movants argue that "[t]his Court should review the obviously flawed decision of the Eighth Circuit below, because it raises issues of great import to the governance of the public education system . . . ." There is no credible argument that either

party's arguments minimize or trivialize the importance of the issues raised by this case. To the contrary, the issues before this Court have been extensively briefed before the District Court in summary judgment motions, motions for directed verdict, and a motion for alteration or amendment of the judgment. Further, the parties briefed the same issues before the United States Court of Appeals for the Eighth Circuit in both their primary briefs and in connection with Lacks' motion for reconsideration and rehearing en banc. Finally, the pending Petition for a Writ of Certiorari and the District's opposition thereto clearly frame the issues asserted in the movants' Brief. Consequently, there are no new issues submitted by movants for this Court's consideration.

In light of the fact that movants fail to identify a single issue that is not already before the Court for consideration, the District respectfully suggests that the proffered Brief is only a burden to the Court and does not aid the Court in executing its duties. For these reasons, movants' Motion should be denied. Furthermore, upon review of the materials already before the Court, denial of Petitioner Lacks' Petition for Writ of Certiorari is entirely appropriate.

Respectfully submitted,

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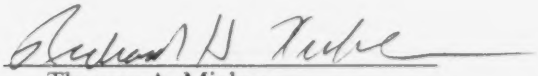

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Respondent's MEMORANDUM IN OPPOSITION MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE was served upon Lisa S. Van Amburg, Esq., of Van Amburg, Chackes, Carlson & Spritzer, 8420 Delmar Blvd., Suite 406, St. Louis, Missouri 63124, Charles A. Werner, Esq., of Schuchat, Cook & Werner, 1221 Locust Street, Suite 250, St. Louis, Missouri 63101, Jeremiah A. Collins, 1000 Connecticut Avenue, N.W., Suite 1300, Washington, D.C. 20036, and Leon Friedman, 148 East 78th Street, New York, New York 10021 by facsimile and by first class, United States mail, postage prepaid, this 11th day of February, 1999.